

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

Crl.Rev.Pet.No. 370 of 2000()

**CRLM.P. 266/1999 of SESSIONS COURT, KASARAGOD
SC. NO.69/1999 OF ASSISTANT SESSIONS COURT HOSDRUG**
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REVN. PETITIONER: APPELLANT/ ACCUSED

**CHELLAMMA W/O.RAMA,
AGED 58 YEARS, ERODE,
TAMIL NADU.**

**BY ADV. SRI.T.P.VARGHESE
SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE**

RESPONDENT: RESPONDENT/ COMPLAINANT

**STATE OF KERALA , REP.BY
THE SUB INSPECTOR OF POLICE, CHANDERA,
KASARAGOD DISTRICT, REP.BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 24/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

CRL.RP. 370/2000

ORDER ON CRL.MP. NO.2173/2000 IN CRL.RP. 370/2000

DISMISSED

24.07.2007

SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

Crl. R.P. No.370 of 2000

Dated 24th July, 2007

ORDER

The revision petitioner stands convicted for the offence under section 55(a) of the Abkari Act and sentenced to undergo R.I for a period of 4 years and to pay a fine of Rs.one lakh, and in default, to undergo simple imprisonment for a further period of six months.

2. The prosecution case is that the revision petitioner/accused was found in possession of 10 bottles of Indian made foreign liquor each containing 180 ml.

3. The evidence adduced in the matter consisted of the testimony of PWs 1 to 5; Exts.P1 to P6 and M.O.1 series and M.O-2.

4. The prosecution case is that the accused was found carrying the contraband through the road. The detecting squad got information that she was engaged in the sale of illicit liquor. Both the courts below have concurrently found that the allegations stand proved. The contention raised before the trial court that what has been seized is only foreign liquor and that she is entitled to carry the above quantity, was not considered by the appellate court. Of

course, the trial court has made an observation that what has been seized on physical verification appeared to be illicit liquor and not foreign liquor. I find that the above is not the case of the prosecution. The property list specifically mentions that the articles seized are Doctors Special Brandy with label and seal. Ext.P5 chemical analysis report also support the above case. It is seen that the percentage by volume of ethyl alcohol was more than 40% in all the samples. It is contended by the counsel for the revision petitioner that only the offence under section 63 of the Abkari Act will be attracted at best.

5. I find that the quantity would work out to 1.8 litres and that the quantity that could be possessed as per Rule 11(a) of the Foreign Liquor Rules was up to 1.5 litres. In the circumstances, I find that the offence under section 55(a) cannot be sustained. There was also no evidence to support the case that she was carrying on sale of illicit liquor. Hence, the conviction is converted to the offence under section 63 of the Abkari Act. The accused/revision petitioner is convicted for the offence under section 63 of the Act and sentenced to pay a fine of Rs.5000/- and, in default, to undergo simple imprisonment of 6 months.

The Crl.R.P. is disposed of accordingly.

K . R . UDAYABHANU , JUDGE .

Kvm/-

K.R.UDAYABHANU, J.

CRL.R.P.370 OF 2000

ORDER

24-7-2007